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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

**METLAKATLA INDIAN
COMMUNITY**, a Federally Recognized
Indian Tribe,

Plaintiff,

v.

MICHAEL J. DUNLEAVY, Governor of
the State of Alaska, **DOUG VINCENT-
LANG**, Commissioner of the Alaska
Department of Fish and Game, and
JAMES E. COCKRELL, Commissioner
of the Alaska Department of Public Safety

Defendants.

Case No.: 5:20-cv-00008-SLG

**PLAINTIFF METLAKATLA INDIAN COMMUNITY'S RESPONSE TO *AMICUS
CURIAE* BRIEF OF THE UNITED STATES**

The *amicus curiae* brief filed by the United States compellingly supports the Metlakatla Indian Community's ("Community's") decades-long effort to secure recognition of its reserved right to fish in the waters surrounding the Annette Islands Reserve. That right was critical at the time Congress established the Reserve in 1891 and remains critical for the Community's future existence. The Supreme Court of the United States, the Ninth Circuit Court of Appeals, and now the United States have all formally recognized that in creating the reserve Congress included an implied right for off-reservation, non-exclusive fishing. It is far past time that the State of Alaska does the same.

The United States' *amicus curiae* brief is another nail in the coffin for the State of Alaska's position that the Community does not have a right to access the fish it needs to achieve the federal purpose of the reservation. As the United States says in its brief, the Ninth Circuit's decision that the Community has a non-exclusive, off-reservation fishing right is the law of the case and the decision is binding on this Court.

The opinion of the United States carries significant weight for two reasons. First, the Federal Government is the origin of the right. When Congress created the Annette Islands Reserve, it impliedly reserved the fishing right necessary to achieve the federal purpose. *Metlakatla Indian Cmty. v. Dunleavy*, 58 F.4th 1034, 1044 (9th Cir. 2023). To the extent any uncertainty on that point still exists, which it should not given the Ninth Circuit's clear decision in this very case, the United States' opinion as the source of the right warrants special consideration.

Second, the United States is the trustee for the Community and has an obligation to protect the Community's rights. United States' Notice of Potential *Amicus Curiae* Participation and Motion to File an *Amicus Curiae* Brief by January 12, 2024 (ECF No. 53 at 3) ("Here, the United States is the trustee of the Community's federally reserved tribal fishing rights with a general trust responsibility to preserve and protect those rights."). As trustee, the Federal Government "has charged itself with moral obligations of the highest responsibility and trust" in carrying out its commitments to Indian Tribes. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942); 25 U.S.C. §§ 5601–5602. The United States thus owes the Community a fiduciary duty to protect the Community's fishing rights, reserved by Congress in 1891, as trust resources. *See Seminole Nation*, 316 U.S. at 296–97.

The United States' support should signal to this Court that the sole focus of the trial on remand is to determine the scope of the right reserved by Congress. The Community appreciates the United States' participation as trustee to confirm the limited scope of the remaining factual issue on remand.

For the reasons stated in the *amicus* brief and the Community's briefing, the Court should grant the Community's cross-motion for summary judgment and deny the State's motion for summary judgment. Resolving these motions and this case quickly is of the

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utmost importance to the Community. Its members are anxious to begin exercising the Community's right to fish off-reservation that the State has denied them for decades.

DATED January 26th, 2024.

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CERTIFICATE OF WORD COUNT

Consistent with Local Rule 7.4, I certify that this document complies with the court-ordered word count limit because it contains 530 words.

DATED this 26th day of January, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **PLAINTIFF'S RESPONSE TO *AMICUS CURIAE* BRIEF OF THE UNITED STATES** was filed with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. Participants in Case No.: 5:20-cv-00008-SLG who are registered CM/ECF users will be served by the CM/ECF system.

DATED January 26, 2024.

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